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II. BOOK REVIEWS.

LEGAL ESSAYS. By James Bradley Thayer. Boston: The Boston Book Company. 1908. pp. xvi, 402. 8vo.

This is a valuable volume. It is composed of essays heretofore scattered in the HARVARD LAW REVIEW and elsewhere. A mere mention of the names of some of them will remind many persons of their unusually fine quality, for here one finds again The Origin and Scope of the American Doctrine of Constitutional Law; Advisory Opinions; Legal Tender; A People without Law (The Indians); *Gelpcke v. Dubuque* (Federal and State Decisions); and Our New Possessions. The other essays, though not so well known, are of similar quality: International Usages; Dicey's Law of the English Constitution; *Bedingfield's Case* (Declarations as Part of the *Res Gesta*); Law and Logic; A Chapter of Legal History in Massachusetts; Trial by Jury of Things Supernatural; Bracton's Note Book; and The Teaching of English Law at Universities.

In almost every line that Professor Thayer wrote there is a certain literary quality. However technical the subject may be, his mode of dealing with it gives side lights from other topics by way of illustration or analogy or distant allusion; and those other topics cover a wide range. Shakespeare and Wordsworth here touch elbows with the Anglo-Saxon Laws of King Aethelbirht, the Year Books, Coke, Hale, Holt, Blackstone, Bentham, Sir Henry Maine, Marshall, the Dawes Bill, and the latest treaty with Spain — and all to good purpose. Surely no one has written of the law more entertainingly or more soundly. Hence this volume, though composed of what its author would have deemed fragments, may be expected to take a permanent place in legal literature, and to be read over and over again by all lawyers who find a charm in excellence of form and of substance.

No one will read the volume without regretting that the author did not find time to cover the whole of the two subjects — Constitutional Law and Evidence — with which his writing was principally concerned. His Preliminary Treatise on the Law of Evidence is by the present volume supplemented to only a slight extent — chiefly as to *res gesta*. His short volume on John Marshall happily contained a discussion of the chief early cases on constitutional law and gave an indication of Professor Thayer's mode of approaching many parts of that subject. The present volume gives an enlarged treatment of several topics in constitutional law and shows how much the profession has lost by the author's inability to finish the treatise that he had planned. Here is preserved his valuable demonstration of the historical reasons for the existence of the judicial power to treat as nullities the unconstitutional acts of legislative bodies — the essential peculiarity of American institutions. Here, too, is the explanation of the limits usually observed by the courts in exercising this power. Here is the conclusive presentation, historical and analytical, of the non-judicial nature of advisory opinions. Here is the discussion of the power of Congress to issue legal tender money, leading up to the conclusion that this power is incident to the borrowing power of a nation. Here too is the demonstration that the acquiring and governing of remote possessions, however questionable from the point of view of statesmanship, cannot be deemed unconstitutional. Yet why specify further? On every page one sees the work of a master, whose originality was matched by his learning and whose gracefulness of expression was equalled by his good sense.

E. W.

A TRUSTEE'S HANDBOOK. By Augustus Peabody Loring. Third Edition. Boston: Little, Brown and Company. 1907. pp. xxxvi, 224. 12mo.

Although the two previous editions of this work were both of comparatively recent date, yet, as the preface to the third edition explains, "the numerous

decisions . . . since the last edition have made it necessary to rewrite and enlarge many parts of it, particularly those parts treating the trustee's liabilities to strangers, extra dividends, and interstate law."

This book, covering only a portion of the law of trusts, is not put forth as an exhaustive or erudite treatise, but is only "meant to state, simply and concisely, the rules which govern the management of trust estates, and the relationship existing between the trustee and beneficiary." In general the task of epitomizing has been admirably performed. Mention, however, has been omitted of one or two cases to which seems attached an importance demanding recognition; for example, *Hardoon v. Belilios* ([1901] A. C. 118), holding a trustee entitled to indemnity from the general property of the *cestui que trust*. The text devotes little attention to theory or general principles, but consists, rather, of a compendium of adjudicated applications of the general principles. This method has resulted in a few obscure or misleading passages. At certain points, too, issue may well be taken with the author's views, as, for instance, his apparent conception that the *cestui's* estate is not a property right in the trust *res*. (See pp. 158 and 161.) Yet the work is marked by discriminating care in the derivation of doctrines from the various cases, and by a plain, terse, non-technical diction that renders the book readable even for laymen. The discussion of a trustee's "Duties" and of his "Management of Fund" should prove of especial utility. All in all, this little volume furnishes a handy book of first help for both lawyer and business man throughout the United States; while the great number of Massachusetts decisions cited and digested lends additional value for use in that Commonwealth.

J. H. W., JR.

FREDERIC WILLIAM MAITLAND. *Two Lectures and a Bibliography*. By A. L. Smith. Oxford: At the Clarendon Press. pp. 71. 8vo.

These two lectures are an interesting and discriminating appreciation of the qualities that made Professor Maitland our greatest legal historian. The complete bibliography of his writings from 1880 to 1907 is exceedingly impressive, but fills the reader with regret as he thinks what the bibliography would have become if Professor Maitland could have continued his work for another twenty-five years.

J. B. A.

NEGLIGENCE IN LAW. By Thomas Beven. In two volumes. Third Edition. London: Stevens and Haynes. Philadelphia: Cromarty Law Book Company. 1908. pp. cciv, 1-726; xi, 727-1505. 8vo.

FREDERIC WILLIAM MAITLAND. *Two Lectures and a Bibliography*. By A. L. Smith. Oxford: At the Clarendon Press. 1908. pp. 71. 8vo.

ELEMENTS OF THE LAW OF BAILMENTS AND CARRIERS. By Philip T. Van Zile. Second Edition. Chicago: Callaghan & Company. 1908. pp. lxxiii, 856. 8vo.

MINING, MINERAL, AND GEOLOGICAL LAW. By Charles H. Shamel. London and New York: Hill Publishing Company. 1907. pp. xxx, 627. 8vo.

FEDERAL USURPATION. By Franklin Pierce. New York: D. Appleton and Company. 1908. pp. xx, 437. 8vo.

THE AMERICAN GOVERNMENT, Organization and Officials with the Duties and Powers of Federal Office Holders. By H. C. Gauss. New York: L. R. Hamersley and Company. 1908. pp. xxiii, 871. 8vo.

APPRENTICESHIP IN AMERICAN TRADE UNIONS. By James M. Motley. Baltimore: The Johns Hopkins Press. 1907. pp. vii, 122.